The Maumee Stone Company, Union Quarry Division *and* Ronald W. Taylor. Case 8-CA-13815

January 25, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On April 15, 1981, Administrative Law Judge Lewis F. Parker issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein.

The Administrative Law Judge found that Respondent excluded Ronald Taylor, the elected steward, from a collective-bargaining negotiation session. However, the Administrative Law Judge then concluded that "an entry of an order with respect to this violation" is not appropriate because "the union representative did not complain about Mr. Taylor's exclusion and none of the hourly employees or the representative objected to negotiating without Mr. Taylor."

The General Counsel excepts, contending that the Administrative Law Judge applied an improper test in determining whether Respondent's actions violated the Act. We find merit in this exception. Absent unusual circumstances, an employer cannot refuse to bargain with a person who represents a labor organization. *Booth Broadcasting Co.*, 223 NLRB 867 (1976). The fact that Ronald Taylor was not an employee of Respondent when he was asked to leave the negotiation session is not an unusual circumstance sufficient to bar him from the session, for he had been chosen, as the union steward, to represent the employees in bargaining. Whether Respondent's actions were objectionable to others or had any adverse impact on the negotiations is not the test; that was the Administrative Law Judge's subjective reaction. The test is whether Respondent's conduct reasonably tends to interfere with protected rights. We find here that it did so, in violation of Section 8(a)(1) of the Act and that a remedy is required.

CONCLUSIONS OF LAW

1. Respondent Maumee Stone Company, Union Quarry Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by Paul Pruitt, violated Section 8(a)(1) of the Act by refusing to permit Ronald Taylor, a representative chosen by the employees for purposes of bargaining, to participate in collective-bargaining negotiations.

THE REMEDY

Having found that Respondent engaged in the unfair labor practice set forth above, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Maumee Stone Company, Union Quarry Division, Scott, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Insisting or demanding that a person selected by the employees as a representative for bargaining be excluded from participating in collective-bargaining negotiations.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

[1] The Administrative Law Judge found that agents of Respondent announced to Respondent's employees that they saw no reason why the employees would join a union because they would receive all the same benefits as Respondent's unionized employees. He further found that inasmuch as the statements were not made with the intent to discourage union activity and did not have the effect of discouraging that activity, they were not unlawful.

The General Counsel excepts, contending the Administrative Law Judge's credibility findings are erroneous and that he applied an improper standard in reaching his conclusion. We agree that the Administrative Law Judge applied an erroneous standard, for the test is not whether Respondent intended to discourage union activity or whether its conduct had that effect, but whether Respondent's conduct "reasonably tends to interfere with the free exercise of employee rights under the Act." *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975). Although the Administrative Law Judge applied an inappropriate standard in determining whether the statements violated Sec. 8(a)(1) of the Act, in the circumstances of this case, including the nature of the statements and the nonexistence of union activity at the time the statements were made, in our opinion, the agents' comments did not constitute a promise of benefit.

(a) Post at its premises in Scott, Ohio, copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by an authorized representative, shall be posted as herein provided immediately upon receipt thereof, and be so maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT insist or demand that any person selected by the Union to be a member of its bargaining committee not be present at or participate in bargaining negotiations.

WE WILL NOT in any like or related manner interfere with our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

THE MAUMEE STONE COMPANY,
UNION QUARRY DIVISION

DECISION

STATEMENT OF THE CASE

LEWIS F. PARKER, Administrative Law Judge: This case was heard on February 4, 1981, in Van Wert, Ohio. The complaint, which issued on June 30, 1980, and which was amended at the hearing,[1] alleges that Respondent The Maumee Stone Company, Union Quarry Division, violated Section 8(a)(1) of the Act by: (1) promising, through its agents and supervisors, benefits to its employees if they refrained from engaging in union activities; (2) prohibiting an employee from engaging in protected union activity, and; (3) discharging or terminating the employment of Ronald Taylor, the Charging Party, to discourage employees from engaging in protected union activity. The complaint also alleges that Respondent, by discharging Taylor, violated Section 8(a)(3) of the Act.

Upon the entire record and from my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and Respondent, I hereby make the following:

FINDINGS OF FACT

A. *Commerce*

Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *Background*

Union Quarry Company operated a quarry, an asphalt plant, and a road construction business in Scott, Ohio, for several years. Wiley Sauls was the owner of Union Quarry. Bernie Fisher, an employee of Union Quarry since 1960, was its superintendent, and he now fills the same capacity for its successor, Maumee Stone. Vondale Taylor was, prior to its takeover by Maumee Stone, general manager of Union Quarry.

Ronald W. Taylor, the Charging Party, had been, as of the date of his last employment with the Company (November 24, 1979) an employee of Union Quarry for 4-1/2 years. Until 1978, when he suffered a back injury and was placed on medical leave, Ronald Taylor worked primarily in the quarry. On his return to the Company on June 4, 1979, Vondale Taylor told him he could not return to his job because it was filled. After some discussion, Ronald Taylor was given a job at the asphalt plant. He stayed there until he was laid off on November 24, 1979.

In late December 1979, Maumee Stone purchased the quarry, its equipment, and buildings from Union Quarry. The asphalt plant was purchased by a company named Oamco and Fred R. Creager & Sons purchased Union Quarry's road construction operation. After the takeover of Union Quarry, Vondale Taylor was hired by Fred R.

[1] Upon motion by the General Counsel, I amended the third sentence of par. 2 of the complaint to read: "Annually, in the course and conduct of its business, the Employer received goods valued in excess of $50,000 directly from points located outside the State of Ohio."

Creager & Sons. Sauls, the former owner, was retained as a consultant by Maumee Stone but Michael Uhl, the treasurer of that company, denied that either Sauls or Vondale Taylor had any authority on the day that it began to operate the quarry to speak on behalf of Maumee. Maumee Stone began operating the quarry on January 2, 1980.

1. The January 2 meeting

On January 2, a morning meeting of all employees of Maumee Stone was held at its new quarry.[2] Vondale Taylor addressed the employees and informed them of the change of ownership. According to Routt, who attended this meeting, when one of the employees asked about a union, Vondale Taylor stated: "All the other quarries is union and chances are that we would be union, too, but he said he saw no reason why we'd want to go union, because we get the same as others."

Later that same day Uhl of Maumee Stone was introduced to the employees by Sauls who also discussed a union: ". . . he sees no reason why we'd want to go union, because we'll get the same as what others get."

Another employee, Mace, corroborated Routt's description of the statements made by Vondale Taylor and Sauls. Mace believed that Sauls was speaking for the new company. Uhl told the employees that no changes would be made for the time being and that the 10 quarry employees then working would be retained and paid the same salary as before. He also said that he could not make any further commitments to them but that Maumee Stone's president, Kirkby, would speak to the employees about a week later.

In mid-January, Kirkby spoke to the Union Quarry employees, told them that all Maumee Stone quarries were union and said that if they wanted to they could form a union. He asked them to choose two or three representatives and said that negotiations would begin in about 2 weeks. The quarry employees contacted a representative of the International Union of Operating Engineers. Two meetings took place, and in late January all active quarry employees signed union authorization cards.

2. Ronald Taylor's status after his November 1979 layoff

Although Ronald Taylor had been laid off in November 1979, he continued to have some connection with the quarry, for he went with his wife, Connie, to pick up her check at the quarry office during the first few months of 1980. At one of these visits, Bill Snyder, the weigh master, gave him a W-2 form to fill out.

On January 18, 1980, while Ronald Taylor at the quarry, he asked Vondale Taylor and Bernie Fisher about the possibility of employment with the new company. They answered that they did not buy the company and that, "They didn't know nothing about it."

Sometime during January 1980, three Union Quarry employees visited Jack Smith, a union steward at another Maumee Stone quarry. He arranged for a union representative to be at his house on the following Saturday; on that day, the whole quarry crew signed union cards. Ronald Taylor was not at this meeting.

On January 30, 1980, Vondale Taylor and Bernie Fisher called two quarry employees, Brent Harris and Leo Carrier, to a meeting at the quarry. Harris testified that Taylor and Fisher said that they heard the employees were going union, that they did not have 100 percent of the employees to sign union cards,and that if they were going to be 100 percent, Rock (Ronald) and Connie Taylor would have to sign union cards. Fisher also repeated his statement to other employees on the same day.

On February 13, 1980, Ronald Taylor was invited to a union meeting at the Holiday Inn in Van Wert, Ohio. He signed a union card at this meeting. On March 6, 1980, at a union meeting in Scott, Ohio, the quarry employees present elected Ronald Taylor as steward. The next day he went to the quarry to pick up his wife's check and saw Vondale Taylor and Bernie Fisher:

> Q. What, if anything, was said?
>
> A. Well, I was joking, I said, I see you got a new steward. And he said, Who? And I said, I'm your new steward. And he said, No, you won't ever be my steward. He said, because you're on lay-off.

On March 10, 1980, Fisher telephoned Ronald Taylor at home and told him that he should attend a Federal safety meeting which was to be held at the Auglaize Quarry on April 8. On March 14, 1980, Fisher told Ronald Taylor to attend another safety meeting scheduled for March 29 at the Union Quarry. Quarry employees are required by Federal law to attend these meetings. Fisher testified that he decided to send Ronald Taylor to the meetings in case he was hired.

On March 28, 1980, Ronald Taylor went to the Union Quarry offices after he was informed that there would be a negotiating meeting at 10 a.m. He testified that shortly before 10 a.m.:

> . . . Fred, the union representative, come in. They all walked in the office. Fred walked right on by me. I tailed in right behind him. I got about ten feet inside the door.
>
> Q. And what, if anything, happened when you got ten feet inside the door?
>
> A. Mr. Pruitt come over, put his hand on my shoulder and asked me to leave without any further explanation.
>
> Q. He didn't say anything more than please leave?
>
> A. No, sir.

Pruitt (Respondent's general manager) explained at the hearing that he asked Ronald Taylor to leave because he thought it would be inappropriate to sit down at a negotiating table and discuss wages and benefits of employees with someone who was not an employee.

[2] Maumee Stone hired all 10 employees who were working in the quarry as of that date. Ronald Taylor was not one of them, since he was on layoff.

Ronald Taylor left. Later, when the union representative came out of the meeting, Ronald Taylor said, "Hey, what's the story?" He said, "The company don't recognize you as an employee, until you're an employee. I can't help you one bit."

Ronald Taylor then asked Pruitt, "Just where do I stand with the company?" Pruitt said that he had no record of Ronald Taylor's seniority with the Company, had never seen Ronald Taylor before that day, and asked Ronald Taylor to explain what he had done before the takeover. Pruitt told Ronald Taylor that he would be called if the quarry needed help that summer. Later that day, Bernie Fisher told Brent Harris to inform Ronald Taylor not to attend the safety meetings. Although Bernie Fisher told him that some employees were a little upset about Ronald Taylor's exclusion from this meeting, Pruitt testified that none of the hourly employees or the union representative objected to conducting negotiations without Ronald Taylor being present. In April 1980, Union Quarry and the Union signed a collective-bargaining agreement effective February 1, 1980, through January 31, 1983. Ronald Taylor did not appear at union meetings to discuss the agreement, nor did he vote on ratification.

3. Ronald Taylor's Blue Cross coverage

Although he was laid off in November, Ronald Taylor used the last pay which he received from Union Quarry to pay $240 for Blue Cross coverage until February 1981. At that time, although he was not on Maumee Stone's payroll, he received a new policy from Blue Cross which was paid for by Maumee Stone. From that time until September 16, 1980, he received no bills for Blue Cross insurance. Uhl stated at the hearing that Ronald Taylor's Blue Cross coverage was mistakenly paid by Maumee Stone after February because Sauls gave him a list of road crew employees whose Blue Cross coverage should be continued even though they had been laid off. Ronald Taylor's name was included in that list. At the direction of Vondale Taylor, Fisher sent a letter to Ronald Taylor canceling his policy effective October 10, 1980.

Ronald Taylor testified that as far as he knew, Maumee Stone had taken no action against any other employees because of their union activities, and Routt agreed that Maumee Stone did not do anything actively to prevent the Union Quarry employees from having a union. Ronald Taylor has not been hired by Maumee Stone, although a temporary employee was taken on in November 1980.

C. *Legal Discussion*

1. The authority of Wiley Sauls and Vondale Taylor

Respondent denies that either Sauls or Vondale Taylor were its agents or supervisors when they made the statements which the General Counsel claims are illegal, but the evidence convinces me that their statements are binding on Respondent.

Sauls was the former owner of Maumee Stone who, at the time he talked with the quarry employees on January 2, 1980, was a consultant to that company. Vondale Taylor was not, according to Uhl, employed by Maumee Stone on that date, and denied that either Vondale Taylor or Sauls had authority to speak for the Company on that date, yet Fisher, the quarry supervisor, testified that until January 1981, Vondale Taylor was "over me" and he later canceled Ronald Taylor's Blue Cross policy on Vondale Taylor's orders. Uhl also conceded that employees of the quarry had been in the habit of talking to Vondale Taylor for 10 years. Furthermore, he stated that while Vondale Taylor was employed by the Creager Company, "I'm not saying there wasn't some flow over from before," the "before," I take it, referring to his job with Union Quarry.

After considering the evidence on this point, I reject Uhl's conclusion that Sauls and Vondale Taylor had no authority to speak for Maumee Stone. They may not have been directed to make the challenged statements, but both of them had a past history of authority over the employees of the quarry. Sauls was a consultant with the new company, and Vondale Taylor was employed by a company whose operations were apparently closely related to the quarry's operations.[3] Vondale Taylor also took actions on behalf of the quarry after the takeover which are consistent with the conclusion that he was still acting as a *de facto* supervisor at Union Quarry. Finally, Uhl's failure to disavow the statements made by Sauls is inconsistent with the claim that he spoke without authority. See *Cagle's Inc.*, 234 NLRB 1148, 1149 (1978), affd. 588 F.2d 943 (5th Cir. 1979). In conclusion, I find that Sauls and Vondale Taylor spoke at the January 2 meeting as agents of Respondent.

If this conclusion is incorrect, the statements made by Sauls and Vondale Taylor are nevertheless imputable to Respondent because the quarry employees had reason to believe that they spoke for the new owner. This belief, expressed by Mace at the hearing, was not unreasonable in light of Sauls' and Vondale Taylor's status, and the fact that Uhl, representing the new owner, accompanied Sauls to the meeting. Moreover, the fact that Uhl never disavowed Sauls' statement would indicate to the employees that Sauls spoke for the management of Maumee Stone. *Broyhill Company*, 210 NLRB 288, 294 (1974), affd. 514 F.2d 655 (8th Cir. 1975); *Crawford Container, Inc.*, 234 NLRB 851, 859 (1978); *P.E. Van Pelt, Inc. d/b/a Van Pelt Tire Trucks*, 238 NLRB 794, 798 (1978).[4]

2. The promise of benefits

According to the Board in *American Telecommunications Corporation, Electromechanical*, 249 NLRB 1135, 1136 (1980), an employer's statement that "employees would receive all the benefits of a union contract without a union was promise of benefits made for the purpose of coercing the employees into rejecting the Union."

[3] See *Budget Marketing, Inc.*, 241 NLRB 1108, fn. 1 (1979).

[4] *Dayton Food Fair Stores, Inc.*, 399 F.2d 153 (6th Cir. 1968), cited by Respondent, is not inconsistent with this ruling, for there the court held on the basis of a different factual situation that an employee did not have just cause to believe that a supervisor's remarks were made on behalf of the employer.

The Board reached this conclusion because *American Telecommunications'* director of operations did not limit his comments on benefits to "informing the . . . employees that in the past Respondent had a practice of giving the same benefits at all of its plants." Rather, his comments were interpreted as:

> . . . conveying the message that any benefits which would accrue to . . . employees pursuant to subsequent collective bargaining automatically would be granted to the Upland employees, and that these employees would receive such benefits whether or not they also selected the Union as their bargaining representative. *Id.* at 1136.

Respondent argues that the facts presented in this case are far different from those in *American Telecommunications, supra*, and claims that the statements made by Vondale Taylor and Sauls amounted to nothing more than an argument that the quarry employees did not need a union, a claim which is lawful, citing *Pearl Recycle Center*, 237 NLRB 491, 494 (1978); *Howard Johnson Company*, 242 NLRB 386 (1979); and *Gerry's Cash Markets, Inc., Gerry's I.G.A.*, 238 NLRB 1141, 1153 (1978), in all of which the Board agreed that statements to the effect that union representation was unnecessary did not violate Section 8(a)(1) of the Act.

After considering the statements of Vondale Taylor and Sauls and the context in which they were made, I find that they were not promises of benefits made for the "purpose of coercing the employees into rejecting the Union." *American Telecommunications Corporation, supra.*

There is no doubt that on January 2, the employees of the quarry were concerned about their jobs, but the General Counsel insists that the challenged statements were made to discourage the formation of a union, not to alleviate fears about future employment. The evidence presented by the General Counsel does not support this argument. The purpose of the meetings on this day was to reassure the quarry employees about their positions with the new company, not to discourage the formation of a union by the promise of benefits, for unionization was discussed only after some employees asked questions about this subject. Indeed, it was only several weeks later (and after Kirkby said that he did not oppose a union) that the quarry employees began serious union activity. Considering the timing of the challenged statements, and the lack of substantial evidence of union animosity, I conclude that they were, at most, expressions of opinion that employees would be as well off without a union as with one, *Gerry's, supra*. The statements were not made with the intent of interfering with the formation of a union at the quarry. Furthermore, the statements did not have such an effect, for a collective-bargainin agreement with the employees was signed only a few months after the allegedly intimidating statements were made.

3. The refusal to permit Ronald Taylor to participate in a collective-bargaining meeting

Absent unusual circumstances, an employer cannot refuse to bargain with a person who represents a labor organization. *Eskimo Radiator Mfg. Co.*, 243 NLRB 1127 (1979). Although Ronald Taylor was not an employee of Union Quarry when he was asked to leave the bargaining meeting, this is not an "unusual circumstance," for the quarry employees elected him as a union steward and were entitled to his representation at the meeting.

However, Respondent's violation of Section 8(a)(1), while not strictly justifiable, is understandable. Pruitt asked Ronald Taylor to leave the bargaining session because he did not feel that it was appropriate to discuss employee benefits with a nonemployee. Although Pruitt was wrong as a matter of law, "the union representative did not complain about Mr. Taylor's exclusion and none of the hourly employees or the representative objected to negotiating without Mr. Taylor." Thus, while Pruitt's act was a violation of Section 8(a)(1) of the Act, it was objectionable, apparently, only to Ronald Taylor, a nonemployee, and it had no adverse effect on negotiations which, very shortly, resulted in the signing of a collective-bargining agreement. Under these circumstances, I do not believe that the entry of an order with respect to this violation is appropriate. See *Bowling Corporation of America, Inc. d/b/a Alganquin Bowling Center, Inc., and Edgar Meyer*, 170 NLRB 1768, 1770 (1968).

4. The claim that Ronald Taylor was discharged because of his Union activity

The General Counsel alleges that on March 28, 1980, when Pruitt told Ronald Taylor that he was not an employee of Union Quarry, Ronald Taylor had status as a laid off employee and that his status was unlawfully terminated as a result of his union activities.

The General Counsel's burden in this case is to establish that protected conduct was a "motivating factor" in Respondent's treatment of Ronald Taylor. *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

The General Counsel claims that Ronald Taylor possessed "the status of a laid off employee with full recall rights." These rights were supposedly recognized by Respondent or its agents through their treatment of Ronald Taylor after the takeover. These facts are discussed fully above, but they do not indicate that Respondent unequivocally recognized Ronald Taylor's "recall rights." Ronald Taylor's Blue Cross coverage was continued, not because he was an employee, but because of a mistake. He was scheduled to attend safety meetings in case of a recall, not because he was considered an employee with an absolute right to be recalled. Thus, I cannot agree with the General Counsel that the facts of this case "establishes the Respondent considered Ron Taylor to possess employment status with recall rights from January 1 through March 28."

However, I will assume for purposes of discussion that the General Counsel's conclusion is correct, and that Ronald Taylor was entitled to be recalled if there was an opening. Assuming this to be true, none of Respondent's actions with respect to Ronald Taylor unlawfully affected this status, for he was never told that he would not be rehired if there was an opening. Pruitt told him on March 28 that he was not an employee, but specifically

advised Ronald Taylor that he would be considered for any future opening at the quarry.

Despite this conclusion, I will further assume for the sake of argument that Ronald Taylor's status as employee with recall rights was terminated on March 28, 1980; however, after considering the arguments presented by the General Counsel, I find that his status was not terminated because he was engaging in protected activity. In reaching this conclusion I have considered those factors which the Board has in past cases looked to for assistance in determining the "true, underlying motive" for a discharge. *W. H. Scott d/b/a Scott's Wood Products*, 242 NLRB 1193 (1979). These are: knowledge of union activity, antiunion bias, demonstrated unlawful hostility, and the timing of the discharge, *Jeffrey P. Jenks d/b/a Jenks Cartage Company*, 219 NLRB 368, 369 (1975); *N.L.R.B.* v. *Dan River Mills, Incorporated, Alabama Division*, 274 F.2d 381 (5th Cir. 1960). The validity of the reason for the discharge must also be considered. *Paramount Metal & Finishing Co., Inc. and Paramount Plating Co., Inc.*, 225 NLRB 464 (1976).

Neither the management of Maumee Stone nor Pruitt has any history of union bias; in fact, other Maumee quarries are unionized. Before Pruitt excluded Ronald Taylor from the bargaining session because he was not recognized as an employee, Kirkby had told the quarry employees that he did not oppose a union and it is, therefore, not credible that Pruitt's action on March 28 was the result of union animus, or animus toward Ronald Taylor because he knew of his status as the union steward.

The reason for Pruitt's action of March 28 is explainable as due to puzzlement over the reason for Ronald Taylor's appearance at the bargaining session. Pruitt was concerned that a nonemployee was to bargain over employee rights. His action was incorrect as a matter of law, and Ronald Taylor should have been admitted to the bargaining session, but he was not excluded because of his status as a union steward or because of unwillingness to negotiate with the union, for Pruitt did negotiate with the union representative on this day and thereafter. These negotiations were apparently conducted without rancor, and they resulted in an agreement. There is, furthermore, no evidence that Respondent took any adverse action with respect to other employees who supported the Union.

Considering all of the evidence presented by the General Counsel, I find that Pruitt's action on March 28, 1980, was not prompted by Ronald Taylor's union activities or any desire to discourage union activities.

CONCLUSIONS OF LAW

1. Respondent Maumee Stone Company, Union Quarry Division is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The International Union of Operating Engineers, Local 18, AFL-CIO, has been, and is now, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not, by its agents and supervisors, promise benefits to employees if they refrained from engaging in union activities.

4. Respondent, by its agent, Paul Pruitt, at its facilities, refused to permit an elected union steward, who was not an employee, from participating in collective-bargaining negotiations, thus prohibiting him from engaging in union activity protected by Section 7 of the Act; nevertheless, because of the circumstances described above, the entry of an order with respect to this violation of Section 8(a)(1) of the Act would serve no purpose.

5. Respondent did not unlawfully discharge or terminate the employment of Ronald Taylor on March 28, 1980.

[Recommended Order for dismissal omitted from publication.]